Supreme Court, U.S.
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No. 04-1071

IN THE

Supreme Court of the United States

WALKER INTERNATIONAL HOLDINGS LIMITED,

Petitioner,

v.

THE REPUBLIC OF CONGO, CAISSE CONGOLAISE D'AMORTISSEMENT, and MURPHY EXPLORATION & PRODUCTION COMPANY - INTERNATIONAL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT MURPHY EXPLORATION & PRODUCTION COMPANY - INTERNATIONAL

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit's holding that, under Section 1610(a) of the Foreign Sovereign Immunities Act ("FSIA"), an American court has no jurisdiction to order attachment of a foreign sovereign's property unless it is "used for a commercial purpose in the United States," conflicts with the decisions of other courts of appeals interpreting Section 1605, a statute that deals with *in personam* actions directly against foreign sovereigns, rather than *in rem* actions against their property.

2. Whether the Fifth Circuit's interpretation of Section 1610(a) renders superfluous Section 1611, which affords absolute immunity to certain types of property belonging to a foreign sovereign no matter where or how they are used.

RULE 29.6 STATEMENT

Murphy Exploration & Production Company-International is a wholly owned subsidiary of Murphy Exploration & Production Company, which is a wholly owned subsidiary of Murphy Oil Corporation, a publicly traded company.

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Murphy Exploration and Production Company – International ("Respondent") files this Opposition to the Petition of Walker International Holdings Limited ("Petitioner") for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 395 F.3d 229 (5th Cir. 2004) and is reprinted in the Appendix to the Petition ("App.") at 1a-15a. The district court's opinion, which is not reported, is reprinted at App. 16a-29a.

STATEMENT OF JURISDICTION

The court of appeals entered its judgment on December 22, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This case involves Section 1610(a) of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-1611, which specifies when an American court may issue an order of attachment or garnishment to enforce a judgment against the property of a foreign sovereign. The provisions of the FSIA are reproduced at App. 30a-48a.

STATEMENT OF THE CASE

Introduction

In seeking this Court's review, Petitioner argues that the Fifth Circuit erred in granting Respondent "standing" to challenge the district court's jurisdiction under FSIA Section 1610.[1] Petitioners are both confused and wrong.

Properly understood, Petitioner's argument is that Respondent did not have the right to raise the FSIA as a jurisdictional bar to Petitioner's attempt to garnish property held by Respondent, and allegedly belonging to the Republic of Congo ("ROC"). The Fifth Circuit properly rejected Petitioner's mislabeled "standing" argument as "irrelevant." (App. 4a.) As the court recognized, Section 1610(a) deprives American courts of jurisdiction over the property of a foreign sovereign – even if that sovereign waives its immunity – unless the court determines, as an initial matter, that the property is "in the United States" and "used for a commercial activity in the United States." Because Section 1610(a) limits the courts' authority to issue an order of attachment, any party was entitled to raise it; indeed, the Court could have considered it *sua sponte*. As the defendant in this action, Respondent unquestionably had the right to protect itself by invoking the jurisdictional provision of the FSIA to defeat Petitioner's garnishment claim.

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[1] All statutory references in this brief are to the FSIA unless otherwise specified.

Petitioner fails to show that the Fifth Circuit's interpretation of Section 1610(a) is at odds with the opinion of any other court. Indeed, the only courts to consider the provisions in question have ruled consistently with the Fifth Circuit.

Factual and Procedural Background

After purchasing an assignment of an Italian company's contractual rights against the ROC, Petitioner filed an arbitral complaint on the contract in France, ultimately winning an award of over $26 million against the ROC.[2] (App. 2a.) Petitioner then obtained a default judgment on the award against the ROC in the United States District Court for the District of Columbia, and looked for a way to execute on the judgment. Petitioner learned from the press that the ROC had signed a production sharing agreement with Respondent, and suspected that Respondent owed the ROC signing bonuses and other payments. (App. 2-3.) Seeking to attach these funds, Petitioner filed a garnishment action against Respondent in the United States District Court for the Southern District of Texas. (*Id.*)

The Texas district court denied Petitioner's request for an order of garnishment, concluding that Section 1610(a) limited the court's jurisdiction over the alleged debt because it did not consist of funds "used for commercial activity" by the ROC, as the statute requires. (App. 19a-28a.)[3] Petitioner appealed, and the Fifth Circuit affirmed.

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[2] The award and judgment were against both the ROC and its subsidiary, Caisse Congolaise D'Amortissement ("CAS"). Because the role of the CAS is not at issue, we refer simply to the ROC.

[3] Section 1610 provides, as relevant here:

(a) *The property in the United States* of a foreign state

(Cont'd)

The Fifth Circuit agreed with the district court that it could not permit Petitioner to execute on property allegedly owned by the ROC unless Petitioner could meet all of the statutory requirements of Section 1610(a). To do so, Petitioner had to show not only that the ROC had waived its sovereign immunity, but also, as an initial matter, that the property Petitioner sought to garnish was "in the United States" and was being "used [by the ROC] for a commercial activity in the United States." (Pet. App. 6a.) Because Petitioner could not meet the commercial activity requirement, the Fifth Circuit held the property was immune from attachment. (Pet. App. 10a-13a, 15a.)

REASONS FOR DENYING THE PETITION

I. The Fifth Circuit's Opinion Does Not Conflict With The Law Of Other Circuits Or With This Court's Jurisprudence.

A. Petitioner's Argument.

In an effort to manufacture a circuit split, Petitioner frames the issue as one of "standing" under the FSIA.

(Cont'd)

> . . . *used for a commercial activity in the United States*, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—
>
> (1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication. . . .

(Emphasis added)

Petitioner then proceeds to cite cases that concern the standing of a party to raise a foreign sovereign's *in personam* immunity from jurisdiction under Section 1605(a) of the FSIA. These cases are irrelevant, because this case deals with *in rem* jurisdiction under Section 1610(a), not *in personam* jurisdiction under Section 1605(a). Petitioner's argument fails because it ignores the distinction between these separate provisions of the FSIA.

Petitioner then compounds its error by treating the issue of waiver as dispositive under Section 1610(a). But, as that statute expressly states, and as all courts to consider the issue have held, an American court may not entertain an action for attachment or garnishment to enforce a judgment unless it determines that the property in question is both "in the United States" and "used for a commercial activity in the United States." Petitioner's action was dismissed because it failed the second prong of this test.

Petitioner's attempt to seek review of that ruling by pointing to cases interpreting Section 1605 is meritless because Section 1605 does not contain the same requirements as Section 1610.

B. Statutory Background.

The FSIA is a comprehensive regulatory statute that applies in every action against a foreign state and codifies the modern doctrine of "restrictive" foreign sovereign immunity recognized under international law. *E.g.*, *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486-88 (1983). Prior to the FSIA, foreign sovereigns urged the executive branch to afford them absolute immunity, and the executive branch generally complied. *Id.* The FSIA was designed to

depoliticize decisions regarding foreign sovereign immunity by transferring them from the executive to the judicial branch of government. *Republic of Austria v. Altman*, 124 S. Ct. 2240, 2253 (2004); *Dames & Moore v. Regan*, 453 U.S. 654, 658 (1981). The FSIA is thus in essence a jurisdictional tool that creates exceptions to sovereign immunity, as set forth in Sections 1604 to 1605, and to a lesser extent, to attachment to enforce a judgment, as set forth in Sections 1609 to 1611.

Section 1610 raises more hurdles than Section 1605 to the court's assumption of jurisdiction, reflecting the historical distinction between execution of a judgment against a foreign sovereign's property and actions against a foreign sovereign on the merits. Enforcing a judgment attachment has always been regarded "as a greater affront to its sovereignty than merely permitting jurisdiction over the merits of an action." *Conn. Bank of Commerce v. ROC*, 309 F.3d 240, 255-56 (5th Cir. 2002) (cited by the Fifth Circuit at App. 20a, n.10); *see Verlinden*, 461 U.S. at 486 (historically, even under the "restrictive" theory of sovereign immunity, foreign sovereigns have enjoyed complete immunity from execution of a judgment against their property in American courts). The FSIA retains this distinction. *De Letelier v. Republic of Chile*, 748 F.2d 790, 798-99 (2d Cir. 1984) (relying on international law background of FSIA to conclude that the FSIA's exceptions to *in rem* immunity under Section 1610(a) were indeed narrower than its exceptions to *in personam* immunity); *Ministry of Def. & Support for The Armed Forces v. Cubic Def. Sys.*, 385 F.3d 1206, 1218-19 (9th Cir. 2004) ("The FSIA narrowed the scope of immunity from attachment, but . . . the structure of the Act makes clear that it preserved the traditional distinction between the two forms of immunity.") (footnote omitted). The additional requirements of Section 1610(a) reflect the concern that

enforcing a judgment against a foreign sovereign is a greater affront to it than subjecting it to a lawsuit on the merits.

A foreign sovereign's waiver of immunity is relevant to both *in personam* and *in rem* jurisdiction under the FSIA. 28 U.S.C. §§ 1605(a)(1), 1610(a)(1) and (b)(1). In keeping with the historical difference between them, however, the FSIA treats waiver differently. Under Section 1605, a foreign sovereign's waiver of immunity *standing alone* permits American courts to exercise jurisdiction over the foreign sovereign. 28 U.S.C. § 1605(a)(1). Under Section 1610(a), by contrast, the waiver alone is not enough. Rather, a court must determine, as an initial matter, that the property on which a plaintiff seeks to execute is both "in the United States" and "used for a commercial activity in the United States" before it can exercise jurisdiction based on waiver (or one of the other enumerated exceptions listed in Section 1610). 28 U.S.C. § 1610(a)(1).

Here, the Fifth Circuit properly considered whether the property at issue met all three of Section 1610(a)'s jurisdictional prerequisites. The court held that the sovereign had waived immunity to execution, and that the property was in the United States. It then properly concluded that the requirements of Section 1610(a) had not been met because there was no evidence the property was "used [by the ROC] for a commercial activity in the United States." (App. 10a-13a.)

C. The Fifth Circuit's Construction Of Section 1610(a) Accords With The Plain Language Of The Statute And With The Second Circuit's Interpretation Of The Statute.

Petitioner's argument rests entirely on the proposition that, because the ROC waived its immunity, the Fifth Circuit erred in holding that a federal district court lacked subject matter jurisdiction over the ROC's property. This argument ignores the express language of Section 1610(a), which makes plain that waiver is not the *sine qua non* of jurisdiction over the property of a foreign sovereign.

As set forth above, the property of a foreign sovereign is immune from attachment under Sections 1609 and 1610, and federal courts thus lack jurisdiction over that property, unless it (1) is "in the United States"; (2) is "used for a commercial purpose in the United States," *and also* meets one of the other exceptions for immunity (*e.g.*, waiver) listed in Section 1610(a). 28 U.S.C. § 1610(a). The Fifth Circuit's holding that the district court lacked subject matter jurisdiction over the property in question because there was no showing that it was used for commercial purposes in the United States reflects nothing more than a straightforward application of Section 1610(a). (App. 10a-13a.) *Conn. Bank*, 309 F.3d at 250; *Af-Cap Inc. v. Republic of Congo*, 383 F.3d 361, 365 (5th Cir. 2004) (waiver of immunity applies only to property that meets the statutory prerequisites set forth in Section 1610(a), namely that the property be "in the United States" and "used for commercial activity in the United States"), *pet. for cert. filed on other grounds*, 73 USLW 3466 (Jan. 31, 2005) (No. 04-1043).

The Second Circuit is the only other circuit to address the relationship of the prerequisites listed in Section 1610(a) with its subsequent enumerated exceptions, *e.g.*, waiver. Its construction of the provision is entirely consistent with that of the Fifth Circuit. In *De Letelier*, 748 F.2d 790 (2d Cir. 1984), the Second Circuit held that plaintiff could not execute against the property of a foreign state because the property was not used for a commercial activity, even though one of the enumerated exceptions to immunity from execution – political terrorism – was indisputably present. *Id.* at 798-99. The court explained that, in enacting the FSIA, Congress did not intend to reverse completely the historical and international antipathy to executing against a foreign state's property, even if the end result is "a right without a remedy." *Id.* In the same vein, in *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70 (2d Cir. 2002), the Second Circuit reiterated that Section 1610(a) requires a plaintiff to show that the property to be garnished is in the United States and is used for a commercial activity in the United States, in addition to showing that one of the exceptions listed in Section 1610 (such as waiver or terrorism) is present. *Id.* at 82-83.

In short, even if the ROC explicitly waived its immunity, execution on the ROC's property remained subject to the other requirements of Section 1610(a), which, unlike the provisions of Section 1605, require a showing that the property is in the United States and used by the sovereign for a commercial activity in the United States, *in addition to* waiver.

Petitioner contends that the interpretation of Section 1610(a) adopted by the Fifth Circuit (and, by implication, the Second Circuit) conflicts with the "purposes of the FSIA,"

which Petitioner maintains (without citation to any authority) was designed to placate foreign nations' "foreign policy objectives." (Pet. 10.) Petitioner is mistaken. As discussed above, prior to enactment of the FSIA, foreign countries invariably placed diplomatic pressure on the executive branch to assert immunity on their behalf in all types of cases brought against them in American courts, and the executive branch typically acceded to their requests. *Verlinden*, 461 U.S. at 487-88. The FSIA sought to supplant this practice by "clarifying the rules that judges should apply in resolving sovereign immunity claims and eliminating political participation in the resolution of such claims." *Altman*, 124 S. Ct. at 2253. In doing so, the FSIA adopted a "restrictive theory of sovereign immunity," *Verlinden*, 461 U.S. at 488, which permitted the courts to assert jurisdiction in certain specified circumstances. If anything, then, the FSIA tends to frustrate, rather than accommodate, the "foreign policy objectives" of foreign countries, because they can no longer lobby the executive branch to free them for litigation in American Courts. The Fifth Circuit carried out the purpose of the FSIA by applying the provisions of Section 1610(a).

D. The Circuit Court Decisions Petitioner Cites To Support Its Claim Of Circuit Conflict Are Irrelevant Because They Address Section 1605, Not Section 1610(a).

According to Petitioner, the Fifth Circuit's holding that Section 1610(a) applies whether or not the foreign sovereign raises it as a defense conflicts with decisions of the Second, Ninth, and Eleventh Circuit Courts of Appeals. (Pet. 6-9.) Petitioner is wrong.

As the Fifth Circuit explained in *Connecticut Bank*, 309 F.3d at 250, Section 1610(a) is a jurisdictional statute limiting the power of the court over a foreign sovereign's property. It is elementary that any party can raise a jurisdictional argument and that the court also may consider jurisdiction *sua sponte*. *E.g.*, *Aquamar S.A. v. Del Monte Fresh Produce N.A., Inc.*, 179 F.3d 1279 (11th Cir. 1999).

All of the cases Petitioner cites – *Republic of Philippines v. Marcos*, 806 F.2d 344 (2d Cir. 1986), *Wilmington Trust v. United States Dist. Ct.*, 934 F.2d 1026 (9th Cir. 1991), and *Aquamar*, 179 F.3d 1279 – concern the immunity of a foreign sovereign (or its agent), an issue governed by Sections 1604 and 1605, rather than the immunity of a foreign sovereign's property from attachment and execution, which is governed by Sections 1609 to 1611. *See Marcos*, 806 F.2d at 360-61 (holding appellants could not raise immunity of former head of state on his behalf); *Wilmington Trust*, 934 F.2d at 1032-33 (holding appellants could not avoid a jury trial by cloaking themselves in the immunity of an absent sovereign state); *Aquamar*, 179 F.3d at 1290-91 (citing *Wilmington* in dicta, and applying Section 1605 to the agent of a foreign sovereign).

The Eleventh Circuit's decision in *Aquamar* supports, rather than contradicts, the Fifth Circuit's decision. There, the court observed that a court may address the issue of foreign sovereign immunity *sua sponte* in the context of Section 1605(a) when its "jurisdiction rests on the presence of the foreign sovereign." 179 F.3d at 1290 (citing, *inter alia*, *Verlinden*, 461 U.S. at 493 n.20 (1982)) ("subject matter jurisdiction in any [] action [against a foreign sovereign] depends on the existence of one of the specified exceptions to foreign sovereign immunity"). Just as a court should

determine whether it has subject matter jurisdiction over a foreign sovereign under Section 1605, even if the parties do not raise the issue, it should do so when asked to exercise its authority over a foreign sovereign's property under Section 1610. That is what the court did here.[4]

In sum, Petitioner's alleged circuit split is non-existent.[5]

E. There Is No Conflict With This Court's Prudential Standing Jurisprudence.

Petitioner next asserts that the Fifth Circuit's decision is in conflict with this Court's prudential standing

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[4] Having cited *Aquamar* to support its standing argument, Petitioner then seeks to distinguish it on the ground that here, unlike *Aquamar*, subject matter jurisdiction was not dependent on foreign sovereign immunity (Pet. 9), but that is simply wrong. Petitioner's claim to the property in question was based on its allegation that the property belonged to the ROC – Petitioner had no independent right to property belonging to Respondent.

[5] To the extent Petitioner is arguing that a garnishee is not personally injured by a claim made on property in its possession, its objection is meritless. Respondent was certainly exposed to the risk that the property would be garnished, leaving it liable to the ROC for failing to adequately protect it. Under Texas law, the garnishee has a legal duty to raise any known defenses. *E.g.*, *Southwest Bank & Trust Co. v. Calmark Asset Mgmt., Inc.*, 694 S.W.2d 199, 200-01 (Tex. App.—Dallas 1985, *writ ref'd n.r.e.*) (holding that "the garnishee has a duty to disclose any defense to the garnishment writ of which he is aware"); *Rowley v. Lake Area Nat'l Bank*, 976 S.W.2d 715, 720 (Tex. App.—Houston [1st Dist.] 1998, *pet. denied*) (garnishee "had a duty to disclose any defense to the garnishment writ of which it was aware").

jurisprudence.[6] (Pet. 14-17.) Again, Petitioner is mistaken. The cases Petitioner cites concern the standing of individuals or associations to bring suit on behalf of others and have nothing to do with this case or with the FSIA. *See United Food & Comm. Workers v. Brown Group, Inc.*, 517 U.S. 544 (1996) (holding that union had standing to bring action on behalf of its members because Congress had abrogated jurisprudential standing limitations in cases like the one at bar); *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301 (2004) (holding noncustodial parent lacked standing to litigate on child's behalf).

Representational standing is not at issue here because Murphy did not bring suit on behalf of itself or anyone else. Rather, it was haled into court by Petitioner, who sued to garnish its property on the ground Respondent owed money to the ROC.

Further, as discussed above, standing is irrelevant because Section 1610(a) defines the jurisdictional limits of a district court's authority over the property of a foreign sovereign, and must be considered by the court even if a party does not raise it.

II. The Fifth Circuit's Interpretation of Section 1610 Does Not Render Section 1611 "Superfluous."

Petitioner argues (without citation to authority) that, by interpreting Section 1610(a) to require a showing of use for

[6] The Court's prudential standing jurisprudence encompasses, *inter alia*, "the general prohibition on a litigant's raising another person's legal rights." *E.g.*, *Elk Grove Unified Sch. Dist. v. Newdow*, 124 S. Ct. 2301, 2304 (2004); *Allen v. Wright*, 468 U.S. 737, 750 (1984).

a commercial activity in the United States in addition to waiver, the Fifth Circuit renders Section 1611 "superfluous." (Pet. 22.)

Section 1611 provides that certain types of property owned by a foreign state – *e.g.*, military and embassy property – are immune from execution "[n]otwithstanding the provisions of section 1610 of this chapter." 28 U.S.C. § 1611. Petitioner argues that Section 1611 would not be necessary to protect military and embassy properties if a commercial activity requirement were read into Section 1610(a) because such properties are not commercial and would thus invariably be immune from attachment. (Pet. 22-23.) This argument ignores the possibility that embassies and military property could be used for a commercial purpose, such as collateral for a loan, and could thus qualify for an exception from immunity under Section 1610(a).

Section 1611 was included in the FSIA to ensure that embassies and military property, which are core to the functions of a sovereign state, are immune from attachment under any circumstances, regardless of waiver or commercial activity. 28 U.S.C. § 1611. The commercial activity requirement of Section 1610(a) thus does not render Section 1611 superfluous.

III. Petitioner Has Waived Issues That Are Not Listed Or Included Within Its Questions Presented. In Any Event, These Issues Do Not Warrant Review By This Court.

Petitioner raises a number of arguments that are not fairly included within its "questions presented." This Court ordinarily does not consider claims raised in such

circumstances. Sup. Ct. R. 14.1(a), 24.1(a); *Jones v. United States*, 527 U.S. 373, 394 n.11 (1999) (declining to address claim outside questions presented in petition); *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Phillips Corp.*, 510 U.S. 27, 34 (1993) (same). The issues discussed below are not included within the "questions presented," which concern (1) Murphy's "standing" to raise FSIA defenses and (2) the effect of a foreign state's waiver of immunity. They are thus waived. We nevertheless address them briefly in an abundance of caution.

A. The Fifth Circuit's Decision Does Not Conflict With The United States' Treaty Obligations Or With The Federal Arbitration Act.

Petitioner argues that the Fifth Circuit's interpretation of the FSIA creates a conflict with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the "New York Convention") and the Federal Arbitration Act ("FAA"). (Pet. 17, 20, 23-25.) Petitioner is wrong.

The New York Convention does not apply here because it "does not apply to the enforcement of judgments that confirm foreign arbitration awards." *Victrix S.S. Co. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713 n.2 (2d Cir. 1987); *see Cubic*, 385 F.3d at 1215 (the New York Convention is no longer relevant once an arbitral award is transformed into a judgment; the Convention has no bearing on attachment or execution of a judgment).

Petitioner does not explain how the FAA conflicts with the Fifth Circuit's interpretation of Section 1610(a), except to cite *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001),

which speaks in general terms about the policy in favor of enforcing arbitration agreements, but says nothing about execution of arbitral awards in general, let alone awards against a foreign sovereign's property. (Pet. 23.)

This issue does not warrant review because there is no conflict with the New York Convention or the FAA.

B. The Fifth Circuit Followed Well-Established Precedent In Interpreting The Commercial Activity Exception To The FSIA.

Petitioner also argues that the Fifth Circuit erred in applying the commercial activity exception to immunity by considering how the property would be used, rather than by considering its "nature." (Pet. 21-22, citing *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992)). But there is nothing unusual about the Fifth Circuit's focus on the "use" to which property is put – indeed Section 1610(a) requires courts to consider whether property is "*used* for a commercial activity." 28 U.S.C. § 1610(a) (emphasis added). It is also perfectly in keeping with this Court's opinion in *Weltover*, which holds, in the context of Section 1605(a)(2), that courts should consider the "nature" or "type" of actions that a sovereign engages in, as opposed to the sovereign's "motive or purpose," in determining whether they fall within the commercial activity exception to immunity. 504 U.S. at 614.

In any event, the issue is irrelevant, because the Fifth Circuit's determination was based on its conclusion that Petitioner failed to produce any evidence showing how the ROC used the property: "Beyond assertions of litigation and administrative reimbursements, there is *no evidence* in the record showing how the signing bonus and other payments

were actually used, or even how other bonuses were used in the past." (App. 12a, emphasis added.)

This Court does not sit to correct allegedly erroneous interpretations of the record. Sup. Ct. R. 10; *Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974). Accordingly, this issue, even if it had been raised in the questions presented, does not warrant review.

CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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